

MANATT, PHELPS & PHILLIPS, LLP
CHRISTOPHER CHATHAM (CA Bar #240972)
CChatham@manatt.com
NATHANIEL L. BACH (CA Bar #246518)
NBach@manatt.com
SARAH E. MOSES (CA Bar #291491)
SMoses@manatt.com
ANDREA D. GONZALEZ (CA Bar #336134)
ADGonzalez@manatt.com
2049 Century Park East
Suite 1700
Los Angeles, California 90067
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Attorneys for Defendants
MEGAN ROUP and THE SCULPT SOCIETY, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY ANDERSON MIND AND
BODY, LLC, a Delaware limited
liability company; and T.A. STUDIO
NEW YORK LLC, a California limited
liability company,

Plaintiffs,

v.

MEGAN ROUP, an individual; and
THE SCULPT SOCIETY, LLC, a
California limited liability company,

Defendants.

Case No. 2:22-cv-04735-PSG-E

Hon. Philip S. Gutierrez

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANTS
MEGAN ROUP AND THE
SCULPT SOCIETY, LLC'S
MOTION FOR FULL OR
PARTIAL SUMMARY
JUDGMENT**

*[Filed Concurrently with Notice of
Motion and Motion; Statement of
Uncontroverted Facts; Compendium
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This lawsuit is and always has been a frivolous and unprovoked effort to bully
4 a rising competitor. Tracy Anderson, a self-styled “pioneer” of the dance-fitness
5 industry that long predated her, sued Megan Roup, a popular fitness entrepreneur and
6 former employee, for allegedly using exercise sequences that Anderson asserts she
7 developed (the “TA Method”) and other supposed “confidential information” to build
8 Roup’s own fitness business, The Sculpt Society, LLC (“TSS”). But Anderson’s
9 claims are barred (1) by the Copyright Act and binding Ninth Circuit precedent
10 because no one can copyright exercise routines; and (2) because Roup never used
11 any “confidential information” in building her business, among other reasons.

12 **First**, Tracy Anderson Mind and Body, LLC’s (“TAMB”) copyright claim is
13 absolutely foreclosed by the Ninth Circuit’s opinion in *Bikram’s Yoga College of*
14 *India, L.P. v. Evolation Yoga, LLC*, 803 F.3d 1032 (9th Cir. 2015) (“*Bikram*”), which
15 holds that functional exercise sequences—even if aesthetically pleasing or
16 incorporating choreographic elements—are unprotectable ideas or processes under
17 17 U.S.C. § 102(b) and non-copyrightable. Thus, all movements, routines, and
18 sequences within Plaintiffs’ DVDs are not protectable by copyright and TAMB
19 cannot prove its claim, which is based solely on such movements. Indeed, the
20 Copyright Office has stated that “[a] series of aerobic exercises [or a] complicated
21 routine consisting of classical ballet positions or other types of dance movements
22 *intended for use in a fitness class*” are examples of the types of works that are “*not*
23 *copyrightable as choreography.*” U.S. Copyright Office, Circular 52: Copyright
24 Registration of Choreography and Pantomime (“Circular 52”) at 4, available at
25 <https://www.copyright.gov/circs/circ52.pdf> (emphases added). Moreover, TAMB
26 lacks ownership of the copyrights it seeks to enforce because, as it concedes, there
27 are no written assignments from the alleged transferors to TAMB.

1 **Second**, T.A. Studio New York LLC (“TANY”) cannot prove its breach of
2 contract claim for the alleged disclosure of confidential information because, among
3 other things, (i) Roup did not use any of TANY’s supposedly confidential
4 information after her employment ended, (ii) TANY concedes it has no evidence to
5 the contrary (“I have no idea what she took or what she didn’t take,” UF 46), and (ii)
6 the supposedly “confidential” information at issue was fully disclosed to the public
7 in any event. Moreover, TANY’s effort to wield the confidentiality provision in such
8 oppressively broad ways violates California Business and Professions Code
9 section 16600 as an invalid restriction on trade, including because TANY bases its
10 claim on the unsupported assumption that Roup is using confidential information that
11 is not even visible in her videos, asserting that [REDACTED]
12 [REDACTED] UF 53; “I believe it’s what you *can’t see* in
13 the video that is confidential to [TANY],” UF50 (emphasis added); and asserting that
14 what’s confidential (about publicly disclosed exercises) is “[t]he *reason* why Megan
15 is moving the way that she’s moving” and the “*ideas* behind her movements,” UF 50
16 (emphases added). Section 16600 invalidates TANY’s effort to enforce its overbroad
17 confidentiality provision in such a vague, oppressive, and anti-competitive manner.

18 The evidence—including numerous fatal admissions by TAMB and TANY
19 (together “Plaintiffs” or “Anderson”) both before and during this litigation—
20 confirms that there are no genuine issues of material fact and that Plaintiffs cannot
21 prove their claims. The Court should grant Defendants’ Motion and enter summary
22 judgment on their behalf.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 Anderson created the so-called “TA Method,” which she describes as a
25 “revolutionary choreography protocol made up of custom and specific movements,
26 sequences, and routines that uniquely combines choreography, fitness, and
27 cardiovascular movement to help people create balance in their bodies so they can
28

1 create balance in their lives.” UF 1. TAMB alleges it is the owner of various
2 registered copyrights in the “TA Works,” which are nineteen “DVDs created by and
3 featuring Anderson, that express, relate to, or are based on the TA Method.” UF 2.

4 Roup worked part time for TANY from 2011 to February 2, 2017. FAC ¶ 3.
5 As part of her employment, Roup signed a contract (the “Trainer Agreement”¹) which
6 purports to restrict Roup’s ability to “use or disclose any [of TANY’s] confidential
7 or proprietary trade secrets” including “training materials or methods” and
8 “workouts, movements, exercise routines, exercise formulas, nutrition advice,
9 content, sequences, prescriptions, dances, muscular structure work and equipment
10 . . . unless such Confidential Information has been previously disclosed to the public
11 generally” UF 44. After quitting TANY, Roup developed and launched TSS,
12 which currently offers on-demand exercise videos and in-person classes. FAC ¶¶ 5-
13 6, 34.

14 The FAC’s two remaining claims are for copyright infringement and breach of
15 the Trainer Agreement.² As to copyright, Anderson alleges that Defendants’ videos
16 infringe TAMB’s copyrights by copying the “choreography movements, sequences,
17 and routines.” *Id.* ¶ 51. As to breach, the FAC alleges that Roup used allegedly
18 “Confidential Information” under the Trainer Agreement to develop and launch TSS,
19 including “nonpublic transcriptions of choreography routines” (*id.* ¶ 31), and
20 identifying four of Defendants’ videos that supposedly use Plaintiffs’ “Confidential
21 Information,” *e.g.*, “‘24Min Full Body 12 w/ Chair/Stool,’ published in or around
22 Spring 2021.” *Id.* ¶ 37. TANY also alleges that Roup used and disclosed unspecified
23 “Confidential Information” about TANY’s “business operations, customers, program
24 structure, customer intake methods, and employees.” *Id.* ¶ 38.

25
26 ¹ The FAC relies on the agreement dated February 28, 2011, but a later version, dated
27 June 11, 2011, expressly supersedes the February 2011 agreement. UF 43.

28 ² The Court dismissed Plaintiffs’ Lanham Act and California unfair competition
claims with prejudice. Dkt. No. 31.

1 **III. LEGAL STANDARD**

2 Summary judgment should be granted if there are no genuine issues of material
3 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.
4 P. 56(a). The moving party bears the initial burden of establishing the absence of a
5 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).
6 Where the nonmoving party will have the burden of proof at trial, the movant can
7 satisfy its initial burden by demonstrating that there is an absence of evidence to
8 support the non-moving party's case. *Id.* at 325. The nonmoving party must then go
9 beyond the pleadings and identify specific facts through admissible evidence that
10 show a genuine issue for trial. *Id.*; Fed. R. Civ. P. 56(c).

11 A genuine issue of material fact must be more than a scintilla of evidence, or
12 evidence that is merely colorable or not significantly probative. *Addisu v. Fred*
13 *Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000). A disputed fact is "material" where the
14 resolution of that fact might affect the outcome of the suit under the governing law.
15 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). An issue is "genuine"
16 only if the evidence is sufficient for a reasonable jury to return a verdict for the
17 nonmoving party. *Id.* "Only disputes over facts that might affect the outcome of the
18 suit under the governing law will properly preclude the entry of summary judgment."
19 *Id.* "[M]ere disagreement or the bald assertion that a genuine issue of material fact
20 exists" does not preclude summary judgment. *Harper v. Wallingford*, 877 F.2d 728,
21 731 (9th Cir. 1989).

22 **IV. ARGUMENT**

23 **A. TAMB Cannot Prove Its Copyright Claim.**

24 **1. Anderson's Exercises Are Noncopyrightable.**

25 TAMB cannot prove its copyright claim because the functional exercise
26 movements on which the claim is based are not copyrightable, full stop. Indeed,
27 TAMB does not allege that Defendants copied the actual video footage contained on
28

1 Anderson’s DVDs; rather, TAMB alleges Defendants copied the “choreography
2 *movements, sequences, and routines*” shown thereon. FAC ¶ 51 (emphasis added);
3 UFs 3, 4. However, controlling Ninth Circuit precedent confirms that the Copyright
4 Act does not protect exercise routines like those in the TA Method, even if Anderson
5 calls them choreography or aesthetically pleasing and fixes them on a DVD. *Bikram*,
6 803 F.3d at 1036 (rejecting “Choudhury’s argument that the [yoga] Sequence is
7 entitled to copyright protection as a choreographic work”).

8 To prevail on a claim for copyright infringement, a plaintiff must prove: “(1)
9 ownership of a valid copyright, and (2) copying of constituent elements of the work
10 that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361
11 (1991). Fundamental to copyright law is the idea/expression dichotomy, codified in
12 Section 102(b) of the Copyright Act—*i.e.*, that copyright protection does not extend
13 to “any idea, procedure, process, system, method of operation, concept, principle, or
14 discovery, regardless of the form in which it is described, explained, illustrated, or
15 embodied in such work.” 17 U.S.C. § 102(b). This idea/expression dichotomy means
16 that “every idea, theory, and fact in a copyrighted work becomes instantly available
17 for public exploitation at the moment of publication.” *Bikram*, 803 F.3d at 1037
18 (quoting *Golan v. Holder*, 565 U.S. 302, 328 (2012)).

19 A. *Bikram* forecloses Anderson’s copyright claim in its entirety. There, yoga
20 pioneer Bikram Choudhury and his company (together, “Choudhury”) sued a yoga
21 studio and its two owners (who had taken Choudhury’s training course) for allegedly
22 infringing his copyright in a book depicting a compilation of exercises called the
23 “Sequence”—a series of 26 yoga poses and two breathing exercises. 803 F.3d at
24 1035-36. The Ninth Circuit affirmed the district court’s grant of summary judgment
25 against Choudhury, holding that the Sequence is unprotectable because, under
26 Section 102(b) of the Copyright Act, it is “an idea, process, or system designed to
27 improve health” that “primarily reflects function, not expression.” *Id.* at 1036, 1040.

1 The Court held that Choudhury was improperly attempting to secure copyright
2 protection for a “healing art: a system designed to yield physical benefits and a sense
3 of well-being.” *Id.* at 1039. It distinguished between Choudhury’s book describing
4 the Sequence, which *was* protectable expression, and the Sequence itself, which was
5 not. *Id.* at 1037-38. That the Sequence reflected Choudhury’s “aesthetic
6 preferences” and was “graceful” and “beautiful” did not help Choudhury’s claim. *Id.*
7 at 1040 (“[T]he beauty of the process does not permit one who describes it to gain,
8 through copyright, the monopolistic power to exclude all others from practicing it.
9 This is true even where, as here, the process was conceived with at least some
10 aesthetic considerations in mind.”). The same is true here. Even if Anderson holds
11 copyrights for her DVDs, such protection does not extend to the noncopyrightable
12 exercise movements and methods depicted therein—and she cannot prevent anyone,
13 whether Roup or any other fitness trainer, from performing exercise movements that
14 Anderson may have used in her DVDs.³

15 The similarities between *Bikram* and this case are striking. Like Anderson,
16 Choudhury developed his method “after many years of research and verification.”
17 *Compare Bikram*, 803 F.3d at 1038, *with* UFs 5, 6. Like Anderson, Choudhury called
18 his Sequence a “method.” *Compare Bikram*, 803 F.3d at 1035, 1038 *with* UF 7. Like
19 Anderson, in an attempt to claim copyright protection, Choudhury highlighted the
20 aesthetic and choreographic aspects of his Sequence. *Compare Bikram*, 803 F.3d at

21 _____
22 ³ Because the routines in TAMB’s DVDs are non-copyrightable, the question of
23 their originality need not be reached to grant this motion. But they are not original
24 in any event, and the Court need only look to other dance-cardio and aerobics
classes that predated Anderson’s DVDs to see that there is nothing original about
the aerobic exercises depicted therein:

- 25 ■ Jane Fonda’s Workout Challenge,
<https://www.youtube.com/watch?v=fwQ1PrED9IE>, including at 8:20 and
42:38 (arms) and 1:14:50 (glutes);
- 26 ■ Jacki Sorensen’s Aerobic Dancing,
<https://www.youtube.com/watch?v=V9atzhzIXqc>, including first 17 seconds
27 and at 30:35 (dance-cardio, heel kicks);
- 28 ■ Judi Sheppard Missett - Jazzercise,
<https://www.youtube.com/watch?v=LD1xSc7oRRk>, including at 5:04 (glutes).

1 1036, *with* UF 8. Like Anderson, the Copyright Office did not issue to Choudhury a
2 copyright registration for a choreographic work. *Compare Bikram*, 803 F.3d at 1043
3 n.11, *with* UFs 30, 31. And like Choudhury, Anderson attempts to protect the
4 unprotectable—functional exercises that are designed to improve physical and
5 mental well being.

6 B. TAMB has repeatedly admitted the functional, physical purpose of her
7 exercises and method, thereby dooming its claim. For example, Maria Kelling,
8 TAMB’s head of training, testified that TAMB operates in the “wellness” industry,
9 which includes “fitness” and “mental *health*, emotional *health*, internal *health*,
10 physical *health*.” UF 9 (emphases added).

11 Anderson has also repeatedly conceded the health-centered purposes of her
12 fitness method, including on her website and social media (all emphases added):

- 13 • “*Fitness* pioneer Tracy Anderson’s revolutionary method *can give*
14 *anyone—regardless of their genetic shape— strong, lean muscles and*
15 *create balance where there is imbalance in their body.*” UF 10.
- 16 • “Tracy has helped countless celebrities *transform their bodies.*” *Id.*
- 17 • “she created *custom workouts* and diets ... she had figured out *how to*
18 *harness and deliver the elusive dancer’s body.*” *Id.*
- 19 • The TA Method is “[a] researched and results-proven *fitness*
20 *methodology.*” UF 11.
- 21 • The TA Method is “a revolutionary *fitness program* designed for
22 *strategic muscle design.*” UF 12.⁴

23 Anderson has also repeatedly admitted that the TA Works at issue here are
24 fitness DVDs meant to help achieve weight loss and muscle toning, as advertised on
25 the product pages for the TA Works on Anderson’s website (all emphases added):

- 26 ➤ **Metamorphosis Series DVDs:** “There are four different incarnations of
27 Metamorphosis by Tracy, all dedicated to a different body type

28 ⁴ <https://tracyanderson.com/studio/the-way/>, last accessed on April 19, 2024.

(Glutecentric, Hipcentric, Abcentric, Omnicentric). *Each version of this 90-day program includes four discs of muscular structure work (nine workouts in total, to transition through every 10 days) that's designed to target problem areas and address the imbalances of each specific body shape. In addition, there's a cardio component, a dynamic eating plan, and a measuring tape and chart to record your progress.*⁵ Tracy asks that you to spend an hour a day, six days per week, *exercising*. Each workout includes 30 minutes of muscular structure work, and 30 minutes of cardio." UF 13.

➤ **Glutecentric DVD:** "If you have a shapeless behind and it is your main area of concern, then the Glutecentric *workouts* would help you create the butt you want. Whether it is too flat or needs a lift, this program is geared to tone down any back fat, get rid of cellulite to gain a distinction between your lifted butt and thighs." UF 15.

➤ **Abcentric DVD:** "Abcentric *workouts* are targeted to achieve a flat stomach with *workouts* concentrating on the lower stomach and back area." UF 16.

➤ **Hipcentric DVD:** "the *workouts* chosen for this program are aimed to pull in the hips, lifting your butt and getting rid of cellulite." UF 17.

➤ **Omnicentric DVD:** "the *workouts* Tracy designed for the Omnicentric body are perfect – a full body-skin-tuck. Anything that is droopy or loose about your body will be awakened, firmed and lifted." UF 18.

➤ **Mat Workout DVD:** "Throughout the hour, you will *activate and engage all of your accessory muscles, pull in your larger muscles, and transform your body.*" UF 19.

➤ **Perfect Design Series Set (I-III):** "This three-disc/video set—which includes three 55 minute *workouts* at the beginner, intermediate, and advanced levels—is *designed to create balance and strength in the body*. Each *workout* includes a warmup, along with targeted sequences for the arms, legs, abs, thighs, and butt." UF 20.

➤ **Precision Toning:** "This DVD program *focuses on empowering the smaller accessory muscles as they strengthen and support the larger ones*

⁵ Ms. Anderson admitted that the measuring tape is "[f]or the purposes of tracking physical progress over the course of the Glutecentric program." UF 14.

1 *throughout the body* while you learn the basics of the Tracy Anderson
2 Method. *Designed to tone, strengthen and engage every muscle, this is a*
3 *workout for all skill levels.”* UF 21.

4 Even when Anderson references “dance” as the topic of a DVD, it is still within the
5 exercise context:

6 ➤ **Unleash Your Inner Pop Star:** “This 50-minute *dance cardio* DVD . . .
7 *will further strengthen your mind and body connection and torch*
8 *calories.”* UF 22. The DVD cover markets the contents: “New Patterns
9 To Target Weight Loss / Connect to Your Body / Learn to Dance While
10 You Workout!” UF 23.

11 Anderson has admitted that *all* of her DVDs are an embodiment of the TA
12 Method. UF 24.⁶ In other words, all of the TA Works are fitness DVDs and therefore
13 the movements therein fundamentally lack protection under the Copyright Act.
14 *Bikram*, 803 F.3d at 1038 (“exercises, while undoubtedly the product of much time
15 and effort, are, at bottom, simply a process for achieving increased consciousness.
16 Such processes, even if original, cannot be protected by copyright”) (quoting *Palmer*
17 *v. Braun*, 287 F.3d 1325 (11th Cir. 2002)).

18 Even Anderson’s FAC repeatedly concedes the health-based purposes of the
19 DVDs and TA Method (all emphases added):

- 20 ○ The TA Method “combines choreography, *fitness, and cardiovascular*
21 *movement to help people create balance in their bodies so they can create*
22 *balance in their lives.”* UF 25.
- 23 ○ TAMB “offers *choreography-based fitness and mat movement classes.”*
24 *Id.*
- 25 ○ “Anderson began developing the TA Method in the late 1990s *to achieve*
26 *for herself the elusive ‘dancer’s body,’ which emphasizes a long and lean*
27 *frame.”* *Id.*
- 28 ○ Anderson “adapted the TA Method *so that it was effective in conferring*

⁶ The other DVDs at issue are described on Anderson’s website, and similarly describe health-based workouts focused on weight loss and toning. <https://tracyanderson.com/product-category/digital-dashboard/dvds/>, last accessed on April 19, 2024.

1 Circuit held that “[e]ven if the Sequence could fit within some colloquial definitions
2 of dance or choreography, it remains a process ineligible for copyright protection.”
3 *Id.*

4 In *Bikram*, the Court looked to the U.S. Copyright Office’s Compendium of
5 U.S. Copyright Office Practices (the “Compendium”), which states that “dance
6 movements” must be more than “mere exercises.”⁹ *Id.* at 1043. Ultimately, though,
7 the Court found that determining whether Choudhury’s Sequence fit within a
8 definition of choreography was unnecessary to its holding because “all categories of
9 works eligible for copyright protection, including choreographic works, are subject
10 to the critical requirements and limitations of Section 102.” *Id.* Thus, it held, “[t]he
11 Sequence is not copyrightable as a choreographic work for the same reason that it is
12 not copyrightable as a compilation: it is an idea, process, or system to which
13 copyright protection may ‘[i]n no case’ extend.” *Id.* at 1044 (quoting 17 U.S.C. §
14 102(b)). The Court continued, “‘successions of bodily movement’ often serve basic
15 functional purposes,” but “*[s]uch movements do not become copyrightable as*
16 *‘choreographic works’ when they are part and parcel of a process.*” *Id.* (citation
17 omitted) (emphasis added).

18 Just like Choudhury’s method, the TA *Method* is also a “process for improving
19 well-being in [its] clients,” UF 29, and thus a “system, *method* of operation, concept,
20 [and] principle” under Section 102(b) (emphasis added). Indeed, Anderson
21 advertises the TA Method as a “results proven *fitness methodology*.” UF 11.
22

23
24 ⁹ The current version of the Compendium confirms the same. “Non-expressive
25 physical movements, such as ‘ordinary motor activities’ or ‘functional physical
26 movements’ — in and of themselves — do not represent the type of authorship that
27 Congress intended to protect as choreography.” U.S. Copyright Office,
28 Compendium of U.S. Copyright Office Practices § 805.5(B)(3) (3d ed. 2021)
(internal citations omitted), available at
<https://www.copyright.gov/comp3/chap800/ch800-performing-arts.pdf>; *Hanagami*
v. Epic Games, Inc., 85 F.4th 931, 940 n.10 (9th Cir. 2023) (“we defer to the
Copyright Office when its interpretation [] has the ‘power to persuade’”) (citation
omitted).

1 (emphasis added). And TAMB also asserts that what Roup allegedly copied in her
2 videos are Anderson’s “ideas”—which are unprotectable by copyright. UF 4; *Feist*,
3 499 U.S. at 344-45 (“The most fundamental axiom of copyright law is that no author
4 may copyright his ideas or the facts he narrates.”) (internal quotation marks and
5 citation omitted). Therefore, no matter how creative she may believe herself to be,
6 Anderson’s own admissions of the functional nature of her movements coupled with
7 *Bikram*’s strict holding absolutely bars her claim.

8 In fact, Anderson’s ownership claim here is far more expansive than what the
9 Ninth Circuit rejected in *Bikram*. There, Choudhury claimed copyright protection
10 for a sequence of 26 poses and two breathing exercises. *Bikram*, 803 F.3d at 1035.
11 Here, Anderson purports to claim ownership of over 200,000 *movements* that she
12 asserts are part of the TA Method and that she has used in various workout routines
13 and DVDs. See FAC ¶¶ 25, 49. But *Bikram* forecloses Plaintiffs’ attempt to
14 monopolize the market for dance-based fitness or any other type of exercise via
15 copyright.

16 In an uncannily prophetic rejection of the type of copyright protection
17 Anderson attempts here, the Copyright Office has concluded that “[e]xamples of
18 compilations that are not copyrightable as choreography or pantomimes include: A
19 *series of aerobic exercises*; A yoga sequence; [and] A *complicated routine* consisting
20 of classical ballet positions *or other types of dance movements intended for use in a*
21 *fitness class*.” Circular 52 at 4 (emphases added). Thus, no matter how allegedly
22 creative, complicated, or dance-based, once a routine is intended for use in a fitness
23 class or to confer health benefits—like the TA Works here—it cannot obtain
24 copyright protection. See also 2 Patry on Copyright § 4:22 (“athletic routines possess
25 a characteristic that is fatal to a claim of choreography: a functional purpose”).

26 B. The TA Works are not choreographic works in any event. TAMB admits
27 it has no copyright registration that contains the term “choreography” or
28

1 “choreographic work” (UF 30), as its registrations are only for the “Motion Picture”
2 DVD (UF 31). Neither Anderson nor Kelling has ever trained any professional
3 dancers to “perform” the TA Method (UF 32), and members of the public do not
4 come to watch TAMB classes for purposes of observing others engage in movement
5 (UF 33). Neither Anderson nor Kelling has ever publicly described the TA Method
6 as a “performance art.” UF 34. Anderson also admits that she has no dance degrees,
7 no dance certifications, and no fine arts degrees, and that “she abandoned her dreams
8 of becoming a professional dancer.” UF 35. Thus, works depicting Anderson’s
9 method cannot qualify as “choreographic works.” *See Hanagami*, 85 F.4th at 940
10 (citing *Bikram* with approval, adopting the Compendium’s definitions of
11 “choreography” and “dance,” and noting distinction between “copyrightable
12 choreography and uncopyrightable dance”); 2 Patry on Copyright § 4:22
13 (“Choreography is concerned with the aesthetic expression of ideas, whether of a
14 storytelling or abstract nature. Exercises are functional: If you do these routines,
15 purported health, emotional, or mental benefits will result. Some routines may be
16 more pleasing to look at than others, but that is unrelated to their purpose.”).

17 **3. TAMB Is Not the Copyright Owner Because No Valid**
18 **Written Assignments Exist.**

19 Even if TAMB’s claim were not completely barred by *Bikram* and Section
20 102(b), it must fail because TAMB is not now, and has never been, the copyright
21 owner of the TA Works because no written agreements exist by which it purportedly
22 obtained its ownership.

23 Only copyright owners may maintain a claim for copyright infringement. 17
24 U.S.C. 501(b). Here, TAMB alleges it is the copyright owner for the nineteen TA
25 Works. UF 2. The copyright registrations for those works state that TAMB acquired
26 its ownership rights “by written agreement” from nonparties Bubi and Babe Exercise,
27 Inc. (“B&B”) (12 DVDs) and Tracy Anderson Private Training, LLC (“TAPT”) (7
28 DVDs). UFs 36, 37. However, TAMB now admits that *no written agreements exist*

1 with either of the supposed transferors. UF 38.¹⁰ Because “a transfer of copyright is
2 simply ‘not valid’ without a writing,” TAMB never obtained copyright ownership of
3 the TA Works. *Konigsberg v. Rice*, 16 F.3d 355 (9th Cir. 1994) (quoting 17 U.S.C.
4 § 204(a)).

5 TAMB’s failure to comply with Section 204(a)’s writing requirement is
6 incurable because “the writing in question must, at the very least, be executed more
7 or less contemporaneously with the agreement and must be a product of the parties’
8 negotiations.” *Rice*, 16 F.3d at 357. In *Rice*, the Ninth Circuit held that a later
9 writing, made “three and a half years” after an alleged oral agreement “and 6 months
10 into a contentious” lawsuit “was not substantially contemporaneous with the oral
11 agreement,” and could not satisfy Section 204(a)’s strict requirements. *Id.* TAMB’s
12 copyright claim therefore fails for this reason as well.

13 **B. TANY Cannot Prove Its Breach of Contract Claim.**

14 TANY’s contract claim fares no better. It fails because (i) Roup did not have
15 in her possession and never used any “Confidential Information” after quitting
16 TANY or in creating TSS—and TANY concedes it has no evidence to the contrary,
17 and (ii) TANY’s attempt to enforce the Confidential Information provision in such
18 an oppressively vague and anti-competitive manner—based on unseen “ideas” in
19 TSS videos and unsupported assumptions of what’s in Roup’s head—renders it
20 unenforceable as an impermissible restriction on trade under Business and
21 Professions Code sections 16600 *et seq.*

22 **1. Roup Never Used any “Confidential Information” in Breach**
23 **of the Trainer Agreement.**

24 To prevail on a claim for breach of contract, a plaintiff must prove: “(1) the
25 existence of the contract, (2) plaintiff’s performance or excuse for nonperformance,

26 _____
27 ¹⁰ Defendants sought all such agreements relating to the copyright ownership and
28 transfer of the TA Works in discovery. UF 39. However, TAMB produced no such
documents in discovery and Plaintiffs’ counsel confirmed they searched for but did
not locate any. UFs 40, 41. [REDACTED]. UF 42.

1 (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” *Lewis v.*
2 *YouTube, LLC*, 244 Cal. App. 4th 118, 124 (2015) (citations omitted). TANY’s
3 contract claim is based on the “Confidential Information” restrictive covenant of the
4 Trainer Agreement, which states:

5 During your employment and following any termination thereof . . . you
6 shall not use or disclose any confidential or proprietary trade secrets,
7 customer and clients lists, drawings, designs, marketing plans, sales
8 scripts, training materials or methods (including, but not limited to,
9 workouts, movements, exercise routines, exercise formulas, nutrition
10 advice, content, sequences, prescriptions, dances, muscular structure
11 work and equipment), CRM methods, management organization
12 information..., operating policies and manuals, business plans,
13 financial records, or other financial, commercial, business or technical
14 information (x) that relate to the Company or any of its affiliates; or (y)
15 that the Company or any of its affiliates has received that belongs to
16 clients or others who do business with the Company or any of its
17 affiliates (collectively “Confidential Information”) to any third Person
18 [], *unless such Confidential Information has been previously disclosed*
19 *to the public generally or is in the public domain...*

20 UF 44.

21 TANY’s claim fails for the simple reason that Roup never used any so-called
22 “Confidential Information” after she left TANY, nor did she use any to create,
23 develop, or operate TSS. UF 45. TANY admits that it has no evidence that Roup
24 took or used any Confidential Information after she left TANY. UF 46. Thus, TANY
25 cannot prove that Roup breached the Trainer Agreement—an essential element of its
26 contract claim.

27 Moreover, TANY’s grievance is its belief that Roup is performing exercise
28 movements similar to those depicted in Anderson’s classes. UF 47. But this is no
basis for a breach claim because, as TANY concedes, all of the routines that make
up the so-called TA Method have been publicly performed. UF 48. Similarly, any
class write-ups that TANY provides to its trainers reflect exercise movements that
are performed in public classes. UF 49. Both the plain terms of the Trainer

1 Agreement—which exempts information “disclosed to the public”—and black letter
2 law confirm this cannot form a basis for breach of the “Confidential Information”
3 provision. *Vacco Indus., Inc. v. Van Den Berg*, 5 Cal. App. 4th 34, 50 (1992) (“[i]f
4 a so-called trade secret is fully disclosed by the products produced by use of the secret
5 then the right to protection is lost”).

6 Thus, not only has Roup not used any Confidential Information (to the extent
7 any actually exists), TANY also cannot prove its claim because it is based on
8 information that has been publicly disclosed.

9 **2. TANY’s Attempt to Enforce the “Confidential Information”**
10 **Restrictive Covenant Against Roup Violates Business and**
11 **Professions Code Section 16600.**

12 The true nature of TANY’s contract claim—attempts to prevent Roup from
13 performing unprotectable exercises that have long been in the public domain—shows
14 that Anderson is attempting to crush a competitive threat by wielding the Trainer
15 Agreement in oppressive ways that violate Business and Professions Code Section
16 16600. Section 16600 provides that “every contract by which anyone is restrained
17 from engaging in a lawful profession, trade, or business of any kind is to that extent
18 void.” Courts “have consistently affirmed that section 16600 evinces a settled
19 legislative policy in favor of open competition and employee mobility.” *Edwards v.*
20 *Arthur Andersen LLP*, 44 Cal. 4th 937, 946 (2008); *Golden v. California Emergency*
21 *Physicians Med. Grp.*, 896 F.3d 1018, 1024 (9th Cir. 2018) (holding that “a
22 contractual provision imposes a restraint of a substantial character if it significantly
23 or materially impedes a person’s lawful profession, trade, or business”). Indeed, the
24 Ninth Circuit has warned that “it will be the rare contractual restraint whose effect is
25 so insubstantial that it escapes scrutiny under section 16600.” *Id.*

26 Here, TANY is wielding the confidentiality provision as a de facto non-
27 compete that would prevent Roup from engaging in basic operations in the dance-
28

1 cardio fitness industry, rendering it an impermissible restraint on trade.¹¹ This is
2 illustrated by the provision’s extraordinary breadth, which makes no distinction
3 between confidential information and trade secrets (and identifies none), and purports
4 to cover nearly everything involving the dance-cardio and aerobics industry,
5 including “training materials or methods (including, but not limited to, workouts,
6 movements, exercise routines, exercise formulas, nutrition advice, content,
7 sequences, prescriptions, dances, muscular structure work and equipment), []
8 management organization information [], operating policies and manuals, [and]
9 business plans.” UF 44.

10 TANY’s interpretation of the provision is even worse. When asked to identify
11 what confidential information Roup used in performing TSS’s exercise routines,
12 TANY’s witness Maria Kelling conceded that she could not see any of TANY’s
13 confidential information but stated, “I believe it’s what you *can’t see* in the video
14 that is confidential to [TANY],” explaining that it’s “[t]he *reason* why Megan is
15 moving the way that she’s moving” and the “*ideas* behind her movements,” UF 50
16 (emphases added).

17 Kelling conceded that she has no way of knowing what Roup is thinking during
18 such videos—and so could not actually know whether Roup is thinking about any
19 information that TANY believes is confidential. UF 51. Indeed, TANY only
20 *assumes* that Roup has used confidential information because Roup is performing
21 exercises that it believes look similar to Anderson’s publicly performed exercises,
22 (UF 52), and asserts that [REDACTED]
23 [REDACTED] (UF 53). But Roup has none of TANY’s confidential information
24 in her thoughts when she is instructing TSS classes. UF 54.

25 Asserting a breach for use of confidential information that *can’t be seen* and
26 pertains to *thoughts* that TANY assumes are in Roup’s head is the epitome of a

27
28 ¹¹ Roup is therefore not only entitled to summary judgment on TANY’s contract
claim but also on her Fifth Affirmative Defense. Dkt. No. 25. at 14.

1 Section 16600 violation. In *Action Learning Sys., Inc. v. Crowe*, the court noted that
2 a similar a confidentiality provision was so broad that, “after leaving ALS, [former
3 employees] would essentially need a lobotomy in order to continue working in the
4 educational field without violating these restrictions.” 2014 WL 12564011, at *12
5 (C.D. Cal. Aug. 11, 2014); *see also Dowell v. Biosense Webster, Inc.*, 179 Cal. App.
6 4th 564, 578 (2009) (“Given such an inclusive and broad list of confidential
7 information, it seems nearly impossible that employees . . . would not have
8 possession of such information.”). This is the same unlawful effort that TANY
9 attempts against Roup, and equally violates Section 16600.

10 Likewise, TANY bases its contract claim on the grievance that Roup
11 supposedly used “the same cueing, write-ups, and video technique to communicate
12 routines to her trainers—virtually mirroring Plaintiffs’ business model.” UF 55. But
13 the use of cueing (*i.e.*, vocally instructing the participants) and exercise write-ups
14 (*i.e.*, basic outlines for exercise routines) is both routine and fundamental to the
15 fitness industry. UF 56 (“business practices that are common in the fitness industry—
16 including creating write-ups”; “most fitness instructors” verbally cue). And by
17 “video technique,” [REDACTED]

18 [REDACTED]
19 [REDACTED]. UF 57. Anderson cannot prevent Roup from engaging in these core
20 industry functions via a contractual restraint on trade. *See Brown v. TGS Mgmt. Co.,*
21 *LLC*, 57 Cal. App. 5th 303, 319 (2020), review denied (Feb. 24, 2021) (“these overly
22 restrictive provisions operate as a de facto noncompete provision . . . [and] are void
23 *ab initio* and unenforceable”).

24 Finally, when asked if TANY has any trade secrets, Anderson could not
25 actually identify one, asserting only unprotectable generalities. Specifically,
26 Anderson said that TANY’s trade secrets are,

27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 UF 58. Anderson then said that TANY's protected "processes" include,

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 UF 59.

11 This is nothing more than nonsensically vague hand waving about topics that
12 stretch across the entirety of TANY's business and only confirm that TANY has not
13 articulated anything remotely protectable as confidential or trade secret.¹² *Mattel,*
14 *Inc. v. MGA Entm't Inc.*, 782 F. Supp. 2d 911, 968 (C.D. Cal. 2011) (granting
15 summary judgment on several "vague and self-congratulatory descriptions of . . .
16 categories of trade secret information," including "forecasting process[es]," "demand
17 planning process [consisting of undefined 'inputs and outputs,'" and undefined
18 "customiz[ations]" to a commercially-available product). Indeed, when asked to
19 explain how Roup is supposed to know which movements she can perform and which
20 she cannot, Anderson responded "I do believe that Megan knows which [movements]
21 matter and what doesn't." UF 60. None of this specifically defines any confidential
22 information or trade secrets and TANY admits it never provided its trainers with any
23 key, legend, or index to help them understand which materials were confidential. UF
24 61. The contractual provision therefore could not put Roup on notice of any

25 _____
26 ¹² California law defines a trade secret as "information, including a formula,
27 pattern, compilation, program, device, method, technique, or process, that: (1)
28 Derives independent economic value, actual or potential, from *not being generally*
known to the public or to other persons who can obtain economic value from its
disclosure or use; and (2) Is the subject of efforts that are reasonable under the
circumstances to maintain its secrecy." Civ. Code § 3426.1(d)(emphasis added).

1 legitimate restrictions. *Imax Corp. v. Cinema Technologies, Inc.*, 152 F.3d 1161,
2 1164-65 (9th Cir. 1998) (a restrictive covenant must “describe the subject matter of
3 the trade secret with *sufficient particularity* to separate it from matters of general
4 knowledge in the trade or of special knowledge of those persons . . . skilled in the
5 trade”) (emphasis in original).

6 If all of this were not bad enough, both the February 2017 exit letter and March
7 2018 cease and desist letter that TANY sent Roup misleadingly and selectively
8 quoted the Trainer Agreement to make it seem like Roup could not perform even
9 basic workout movements—omitting the language that such movements lose their
10 confidential, trade secret status when publicly disclosed. UF 62. And when Roup
11 responded to the March 2018 letter by noting that she has remained in compliance
12 with her contract and asked TANY for specifics of any alleged violations, TANY
13 never responded. UFs 63, 64. Indeed, this has been precisely TANY’s
14 anticompetitive playbook of sending baseless cease and desist letters to former
15 TANY trainers who are competing in the fitness industry. UF 65.

16 Anderson’s unlawful and anti-competitive campaign against Roup could not
17 be plainer. The Trainer Agreement’s confidentiality provision is a facial and as-
18 applied violation of Section 16600, and TANY’s contract claim fails.

19 **V. CONCLUSION**

20 For all the foregoing reasons, Defendants’ Motion should be granted and
21 summary judgment entered on their behalf.

1 Dated: April 19, 2024

MANATT, PHELPS & PHILLIPS, LLP

2
3 By: /s/ Nathaniel L. Bach

4 Christopher Chatham

Nathaniel L. Bach

Sarah E. Moses

5 Andrea Del-Carmen Gonzalez

6 *Attorneys for Defendants*

7 MEGAN ROUP and THE SCULPT
8 SOCIETY, LLC

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Megan Roup and The Sculpt Society, LLC, certifies that this brief contains 6,445 words, which complies with the word limit of L.R. 11-6.1.

Dated: April 19, 2024

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Nathaniel L. Bach

Christopher Chatham

Nathaniel L. Bach

Sarah E. Moses

Andrea Del-Carmen Gonzalez

Attorneys for Defendants

MEGAN ROUP and THE SCULPT
SOCIETY, LLC